

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 539 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RAVIYABHAI B VASAVA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 539 of 1994
MRS SHILPA J UNWALLA for Appellant
MR DP JOSHI, Ld. APP for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 09/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. By filing this Appeal under Section 374(2) of the

Code of Criminal Procedure, 1973, the appellant has challenged the legality of the judgment dated May 9, 1994 rendered by the learned Additional Sessions Judge, Bharuch in Sessions Case No.114 of 1993, by which he is convicted of the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and fine of Rs.100/- in default R.I. for one month.

2. The complainant - Lalitaben Ambubhai Vasava is a resident of village Vanthewad, Tal.Jaghadia, District : Bharuch. At the relevant time, she was residing with her parents. Deceased Dalsukhbhai Madhiabhai, who was son of her uncle was also residing with her as the father of the deceased had expired. The appellant was cultivating the land belonging to the deceased but the deceased was demanding back the land from the appellant as the deceased was desirous of constructing a residential house for him. Because of this demand quarrels were taking place between the appellant and the deceased. Witness Fatehsinh Mohanbhai Vasava was formerly, the Police Patel of village Vanthewad and was a leading citizen of the village. The people of the village used to approach Fatehsinh for advice and redressal of their grievances. Accordingly, the deceased had gone to the house of witness Fatehsinh Mohanbhai Vasava on April 8, 1993 at about 7:45 P.M. regarding the resolution of dispute between him and the appellant. At that time, witness Fatehsinh Mohanbhai Vasava and his family members were taking dinner and, therefore, witness Fatehsinh Mohanbhai Vasava had asked the deceased to wait in wada situated on the back of his residential house. At that time, the appellant had also come to the house of Fatehsinh Mohanlal Vasava and had gone towards the wada situated on the back of the house of Fatehsinh Mohanbhai Vasava. Meanwhile dinner for the deceased was prepared by complainant Lalitaben and, therefore, Lalitaben had asked her younger sister Vanitaben Ambubhai Vasava to call the deceased for the purpose of dinner. Witness Vanitaben had gone to the house of the Fatehsinh Mohanlal Vasava for the purpose of calling the deceased and seen that the appellant had given two knife blows i.e. one on the waist and another on the back of the deceased. Thereafter, witness Vanitaben had informed her sister Lalitaben about the incident. When the knife blows were given by the appellant to the deceased, the deceased had raised shouts, as a result of which Fatehsinh who was taking dinner with his family members, had come out from his house and found that the deceased was lying on the ground. On receipt of information from witness Vanitaben, the complainant i.e. Lalitaben had come to

the place of incident and, thereafter, Lalitaben had gone to Jaghadia Police Station for the purpose of lodging the complaint against the appellant. The Police Officer in the charge of the Police Station had asked Lalitaben to bring the injured to the Police Station and, therefore, she had come back to the place of incident and the deceased was taken to the Police Station in the cart belonging to witness Fatehsinh. At the Police Station, the complaint as narrated by Lalitaben, was reduced in writing and registered. Initially, the investigation into the case was made by the Head Constable Ishwarbhai Maganbhai, who had arrested the appellant on April 9, 1993 and prepared panchnama regarding production of blood stained knife by the appellant in the presence of independent witnesses. He had also visited village Vanthewad and prepared the panchnama of the place of occurrence. The injured was first taken to C.H.C. Hospital, Bharuch. The medical Officer on examination had found that the deceased had sustained serious injuries and, therefore, the deceased was referred to S.S.G. Hospital, Vadodara for better treatment by experts. The deceased was admitted in S.S.G. Hospital, Vadodara on April 9, 1993 at about 5.35 A.M., but succumbed to the injuries on April 9, 1993 at about 9.00 A.M. Initially, the offence punishable under Section 324 of the Indian Penal Code was registered against the appellant, but on receipt of wireless message to the effect that the deceased had succumbed to the injuries, an offence punishable under Section 302 of the Indian Penal Code was registered against the appellant. Thereafter, further investigation into the case was made by P.S.I. Mr. Vajesinh Kalubha Rana of Jaghadia Police Station. After taking over the investigation from the Head Constable Ishwarbhai Maganbhai, he had verified the statement of the witnesses which were recorded by Head Constable Ishwarbhai Maganbhai. The P.S.I. had also recorded the statement of other witnesses who were found conversant with the facts of the case. The blood stained earth and blood stained knife produced by the appellant as well as other articles seized during the course of the investigation were sent to Forensic Science Laboratory for analysis and the report of the Serologist was obtained. On conclusion of investigation, the appellant was chargesheeted of the offence punishable under Section 302 of the Indian Penal Code in the Court of learned Judicial Magistrate, First Class, Jaghadia. As the offence punishable under Section 302 of the Indian Penal Code is exclusively triable by a Court of Sessions, the case was committed to the Sessions Court, Bharuch for trial where it was numbered as Sessions Case No.114 of 1993.

3. The charge at Exh.3 was framed against the appellant of the offence punishable under Section 302 of the Indian Penal Code as well as Section 135 of the Bombay Police Act. The charge was read over and explained to the appellant who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined. - (i) Lalitaben Ambubhai Vasava, P.W.1, Exh.12; (ii) Vanitaben Ambubhai Vasava, P.W.2, Exh.13; (iii) Dr.Rakeshbhai Narendranath Tandan, P.W.3, Exh.14; (iv) Nagjibhai Narsinhbhai Parmar, P.W.4, Exh.14; (v) Fatehsinh Mohanbhai Vasava, P.W.5, Exh.19; (vi) Chimanbhai Mangabhai, P.W.6, Exh.21; (vii) Ashokkumar Bhanubhai Purohit, P.W.7, Exh.22; (viii) Geetaben Fatehsinh Vasava, P.W.8, Exh.23 ; (xi) Ishwarbhai Maganbhai, P.W.9, Exh.25 and (x) Vajesinh Kalubha Rana, P.W.10, Exh.27, to prove its case against the appellant. The prosecution also produced documentary evidence such as arrest panchnama of the appellant at Exh.6, inquest report at Exh.7, report of the Serologist at Exh.11, post mortem note of the deceased at Exh.15, complaint lodged by witness Lalitaben at Exh.17, panchnama of the place of incident at Exh.20 etc. in support of its case against the appellant. After recording of the evidence of the prosecution witnesses was over, the learned Judge explained to the appellant circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement as required by Section 313 of the Criminal Procedure Code. In his further statement, the appellant stated that the case of the prosecution against him was false, but did not examine any witness in support of his defence. However, the appellant submitted written explanation on April 4, 1994 stating inter alia that on the day of incident, he had not gone to the house of witness Fatehsinh Mohanbhai Vasava which is situated in the village Vanthewad. In the written explanation, the appellant claimed that on seeing the deceased in a bleeding condition in his Wada or the field, witness Fatehsinh had called Lalitaben and Vanitaben and after conspiring with them had falsely implicated him in the incident. The appellant also stated in his written explanation that he had no dispute regarding wada with the deceased and that earlier no quarrel had taken place between him and the deceased relating to the Wada. Lastly, the appellant in his written explanation asserted that he had not produced the muddamal knife and that he had not committed any offence as claimed by the prosecution.

4. On appreciation of evidence adduced by the

prosecution, the learned Judge held that it was proved by the prosecution beyond reasonable doubt that the deceased had died a homicidal death. The learned Judge referred to the evidence of the complainant Lalitaben as well as that of witness Vanitaben and after noticing contradictions appearing in their evidence held that their evidence was reliable, trustworthy and cogent. The learned Judge also referred to the evidence of witness Fatehsinh Mohanbhai Vasava as well as that of witness Geetaben Fatehsinh Vasava and held that their evidence being trustworthy was acceptable. After placing reliance on the sworn testimony of witness Lalitaben, witness Vanitaben, witness Fatehsinh and witness Geetaben, the learned Judge held that it was proved by the prosecution that the appellant had caused death of the deceased by inflicting knife blows. The learned Judge referred to the evidence of Dr. Rakeshbhai Narendranath Tandan who had conducted post mortem examination of the dead body of the deceased and held that the appellant was liable to be convicted of the offence punishable under Section 302 of the Indian Penal Code. The learned Judge noticed that the prosecution had not produced any Notification issued by the Competent Authority under Section 37(1) of the Bombay Police Act and, therefore, concluded that the charge against the appellant of the offence punishable under Section 135 of the Bombay Police Act was not proved. In view of the above referred to conclusions, the learned Judge has convicted the appellant of the offence punishable under Section 302 of the Indian Penal Code and imposed the sentence, which is referred to earlier, by the judgment dated May 9, 1994, giving rise to the present Appeal.

5. Mrs Shilpa J. Unwalla, learned counsel for the appellant, after taking as through the entire evidence on record submitted that neither the evidence of the complainant Lalitaben nor the evidence of her sister Vanitaben is either reliable or trustworthy and, therefore, the same should not have been relied upon by the learned Judge of the trial Court for the purpose of convicting the appellant of the offence punishable under Section 302 of the Indian Penal Code. According to the learned counsel for the appellant, the complainant Lalitaben in her substantive evidence before the Court has claimed that on hearing shouts raised by her sister Vanitaben to the effect that the deceased was assaulted with knife, she had gone to the wada of witness Fatehsinh and that she had found that the deceased was lying on the ground, whereas in her complaint, she has stated that she was at her house where her sister Vanitaben had informed her about the assault on deceased and, thereafter she had

gone to the wada of Fatehsinh and as her evidence stands contradicted by her complaint, her evidence should not have been relied upon by the learned Judge. Further, the learned counsel for the appellant pleaded that Lalitaben in her testimony before the Court has stated that she was informed by the deceased that he was assaulted with knife by the appellant whereas no reference to any such oral dying declaration having been made by the deceased to the witness is to be found in her complaint and, therefore, in view of the material improvement made by the witness in her evidence, her evidence should be discarded. So far as the evidence of witness Vanitaben is concerned, the learned counsel for the appellant contended that her claim that she had witnessed the incident in question is highly doubtful because she has stated in her deposition before the Court that she had entered into the wada of Fatehsinh through the opening in hedge provided on the western side of the house of witness Fatehsinh. The learned counsel for the appellant emphasized that the claim of witness Vanitaben that the witness Fatehsinh had caught red handed the appellant and had tied him with a staircase is totally false and does not get corroborated from the evidence of witness Fatehsinh and, therefore, the evidence of witness Vanitaben could not have been relied upon by the learned Judge for the purpose of convicting the appellant. The learned counsel for the appellant referred to the panchnama of the place of occurrence as well as evidence of witness Fatehsinh and claimed that in view of the hedge between the house of the complainant and wada of witness Fatehsinh, Vanitaben could not have witnessed the incident and her evidence should be disbelieved. According to the learned counsel for the appellant the appellant had no knowledge that at about 7:45 P.M. on April 8, 1993, the deceased was to go to the house of witness Fatehsinh and, as the appellant had no reason to go to the house of witness Fatehsinh, the case of the prosecution that after going to the wada of witness Fatehsinh, the appellant had inflicted knife blows on the deceased is not reliable. What was stressed was that the prosecution evidence does not establish that any altercation had taken place between the appellant and the deceased before so called knife blows were delivered by the appellant with knife and, therefore, the prosecution case being improbable should be disbelieved. The learned counsel for the appellant urged that the evidence of witness Fatehsinh establishes that at the time of incident there was darkness in the wada and as no arrangement for light was made in the wada, his claim that the appellant was not found in the wada when he had come out of his house on hearing shouts of the deceased, being unreliable, should be ignored by the Court. So far

as the evidence of witness Geetaben Fatehsinh Vasava is concerned, the learned counsel for the appellant argued that her evidence does not establish that the appellant was the author of the injuries caused to the deceased and, therefore, the same should not be taken into consideration, while deciding the question as to whether the appellant is guilty or not. The learned counsel for the appellant also pleaded that the production of blood stained knife by the appellant in presence of panch witnesses is highly doubtful, as the panch witnesses have turned hostile and, therefore, find of blood on the knife having the same blood group as that of the deceased should not be taken into consideration by the Court, while assessing the evidentiary value of the evidence adduced by the prosecution against the appellant. The learned counsel for the appellant claimed that the production of the clothes of the deceased has been fabricated by the Investigating Agency and the investigation being dishonest, a reasonable benefit of doubt should be given to the appellant. It was argued that there is delay of about three hours in lodging of F.I.R. by complainant Lalitaben which probabilises the defence of the appellant that on seeing the injured lying in his wada, witness Fatehsinh, after calling witnesses Lalitaben and Vanitaben had conspired the case, against the appellant and, therefore, the prosecution case being of doubtful nature, should be disbelieved by the Court. Lastly, the learned counsel for the appellant submitted that the evidence on record does not establish satisfactorily that the appellant had committed murder of the deceased and, therefore, the appeal to be accepted.

6. Mr.D.P.Joshi, learned APP for the respondent State has contended that the contradictions and/or improvements appearing in the evidence of complainant Lalitaben Ambubhai Vasava and witness Vanitaben Ambubhai Vasava should not be over emphasized by the Court as they are rustic village women and had given deposition about the incident after a lapse of nine months. The learned APP for the respondent - State pleaded that witness Lalitaben as well as witness Vanitaben are related to the deceased as well as the appellant and in such circumstances, false implication of the appellant is totally ruled out. The learned APP for the State claimed that there is no reason for any of the prosecution witnesses to falsely implicate the appellant in such a serious case and, therefore, the learned Judge of the trial Court did not commit any error in placing reliance on their evidence for the purpose of convicting the appellant. What was stressed by the learned APP for the State was that the evidence of complainant - Lalitaben

Ambubhai Vasava stands materially corroborated, not only by her complaint, but also by the evidence of witness Vanitaben as well as witness Fatehsinh and witness Geetaben and, therefore, the conviction of the appellant as was recorded by the learned Judge of the trial Court should be confirmed by this Court. According to the learned APP for the State, the evidence of prosecution witnesses established beyond reasonable doubt that the appellant was cultivating the land belonging to the deceased and that as the deceased had demanded the land for construction of his house quarrel had taken place between the appellant and the deceased and that the appellant had strong motive to commit the murder of the deceased. The learned APP for the State further pleaded that the prosecution case against the appellant, having been established by cogent and convincing evidence, the appeal should be dismissed.

7. We have considered the arguments advanced at the Bar and reappreciated the whole evidence on record. The fact that the deceased had died a homicidal death is not in dispute. The evidence of Dr. Rakeshbhai Narendranath, P.W.3 Exh.14 establishes that on April 9, 1993 at about 4.30 P.M. the dead body of the deceased was brought before him by Police Sub-Inspector of Raopura Police Station, Vadodara for post mortem examination and that he had conducted post mortem examination on the dead body of the deceased. His evidence further shows that on examination of dead body, he had found two external injuries which are as under :-

- "1. Incised stab wound of size 4.5 CM X 1.8 CM X 14 CM deep in muscle plane present on back of left chest extending transversely just left of midline track is going down wards, forward slightly and towards right side in muscle plane on back of right chest below skin and subcutaneous tissue wound is 20 CM below the nape of neck.
2. Incised stab wound of size 4.5 CM X 1.4 CM X abdominal cavity deep present on left outer part of abdomen mid and anterior axillary line transversely placed, 9 CM above antem region illiae spine and 24 CM below axillare mesenteric and coils of G.I. are preprotruding out of the wound.

On internal examination, the doctor had found the injuries which are enumerated by him in detail in post mortem notes. The doctor has stated before the Court that the external injury No.2 was sufficient in the

ordinary course of nature to cause the death of the deceased and that the said injury was possible by muddamal knife. The cause of death as mentioned in the postmortem notes is heamorrhage and shock following stab injury on abdomen. Further the injuries, which were sustained by the deceased, are also mentioned in detail in the inquest panchnama, which is produced on the record of the case at Exh.7. It is nobody's case that the injury sustained by the deceased were suicidal or accidental. Having regard to the nature of evidence adduced by the prosecution we are satisfied that the deceased had died a homicidal death and, therefore, the finding recorded by the learned Judge to the effect that homicidal death of the deceased is proved beyond the reasonable doubt being just and proper is hereby upheld.

8. As observed earlier, the prosecution has mainly relied upon evidence the witnesses (1) Vanitaben Ambubhai Vasava, P.W.2 Exh.13, (2) Fatehsinh Mohanbhai Vasava, P.W.5 Exh.19 and (3) Geetaben Fatehsinh Vasava, P.W.8, Exh.23 to prove the charge against the appellant. So far as the evidence of witness Lalitaben Ambubhai Vasava P.W.1, Exh.12 is concerned, we find that the deceased was her cousin and was residing with her. She has stated in her testimony that the incident had taken place at about 8.00 P.M. in the Wada of Police Patel Fatehsinh Mohanlal which is situated on the back of his house and that at that time she was at her house. The witness has stated that the house of Fatehsinh is at a distance of about 50 steps from her house and that she had asked her younger sister Vanitaben Ambubhai Vasava to call the deceased as the dinner was ready. According to this witness, her sister Vanitaben had gone to the house of witness Fatehsinh for the purpose of calling the deceased and that witness Vanitaben had raised shouts that the deceased was injured with knife. The witness has further stated in her evidence that on hearing of shouts, she had gone to the Wada of witness Fatehsinh and had found that the deceased was lying on the ground. According to her, she had found that there was an injury on the waist of the deceased and she had applied the bandage. The witness has stated in her evidence that, thereafter, she had gone to Jaghadia Police Station with her younger brother on a cycle and that Vanitaben had informed her that the appellant had given knife blows to the deceased. According to her, the deceased had also told her that he was given knife blows by the appellant. What is claimed by her in her evidence is that the Police Officer incharge of Jaghadia Police Station had asked her to bring the injured to the Police Station and, therefore, she had returned with her younger brother and that the

deceased was taken to the Jaghadia Police Station in the cart of Police Patel. The witness has stated that at Jaghadia Police Station, she had lodged a complaint, which was registered by the Police and, thereafter, the injured was removed to Jaghadia Dispensary with Police Yadi. The witness has claimed that the doctor on duty at Jaghadia Dispensary had advised to remove the deceased to Bharuch Hospital and, therefore, the deceased was removed to Bharuch Civil Hospital by her brother. The witness has also informed the Court that thereafter, the deceased was removed to S.S.G. Hospital, Vadodara, where he had expired on the next day. In cross-examination, the witness has stated that the incident had taken place after 8.00 P.M. and at that time there was darkness. The witness has admitted during her cross-examination that there was a cactus hedge between her house and the house of witness Fatehsinh. The witness has also admitted during her cross-examination that she had not stated in her complaint that the deceased had informed her that he was given knife blows by the appellant. The witness has also admitted that she had not stated in her complaint that Vanitaben had raised shouts to the effect that the deceased was assaulted with knife and, therefore, she had gone to Wada of Fatehsinh. According to this witness, the distance between village Vanthewad and Jaghadia is about 2 K.M. On re-appreciation of the evidence of complainant Lalitaben Ambubhai Vasava, it becomes evident that she has not posed to be an eye-witness at all. It is not her case that she had witnessed the incident. Her claim that the deceased had made an oral dying declaration before her, does not inspire confidence because not only we do not find any reference to any such oral dying declaration having been made in her complaint, but even other witnesses have also not stated that any such oral dying declaration was made by the deceased to Lalitaben. However, her evidence establishes beyond reasonable doubt that the deceased had gone to the house of witness Fatehsinh and that on learning about the incident from witness Vanitaben, she had gone to the Wada of witness Fatehsinh and found the deceased lying on the ground in an injured condition. Her evidence also establishes that thereafter, she had gone to the Police Station on the cycle of her brother, but the Police Officer incharge of Police Station had refused to register the complaint and had asked her to bring the injured to the Police Station and therefore, she had come back and taken the injured to the Police Station in the cart belonging to the witness Fatehsinh. Witness Fatehsinh, P.W.5, Exh.19 has also stated in his evidence that the deceased was taken in his cart to Jaghadia Government Dispensary. In the cross-examination

by defence, witness Lalitaben had informed the Court that the distance between the village Vanthewad and Jaghadia is about 2 K.M. Under the circumstances, we are of the opinion that there was no delay on the part of complainant - Lalitaben in lodging the complaint. It is relevant to note that Lalitaben is a rustic village woman and she had shown the courage of going to the Police Station during the night hours and lodged a complaint promptly without any loss of time. The delay, if any, stands satisfactorily explained by her and, therefore, no benefit can be given to the appellant on the ground that there is an unexplained delay in lodging the complaint in the case. Her evidence further establishes that witness Vanitaben had gone to the house of witness Fatehsinh for the purpose of calling the deceased. Though this witness has not claimed that she had seen the incident, we are of the opinion that the prosecution is entitled to place reliance on her evidence for the purpose of corroboration to other evidence on record.

9. Witness - Vanitaben Ambubhai Vasava, P.W.2 Exh.13 in her deposition has stated that at the time of incident, she was staying at village Vanthewad with her parents and that the deceased was her cousin. This witness has also stated that the distance between her house and house of Fatehsinh is 50 steps. According to her, the incident in question had taken place at about 8.00 P.M. in the wada of witness Fatehsinh, which is situated on the back of his house and at that time, she had gone to the wada for the purpose of calling the deceased as his dinner was ready. The witness has specifically stated that she had seen the appellant inflicting blows with knife on the back of the deceased. The witness has stated that meanwhile Fatehsinh Mohanbhai Vasava had come and apprehended the appellant and tied him with a staircase. The witness has informed the Court that she had called Lalitaben by raising shout and, therefore, Lalitaben had come immediately. According to her, her brother Mahesh and her sister Lalitaben had gone on foot to Jaghadia Police Station and thereafter her elder brother Champak had removed the injured from Jaghadia to Bharuch Civil Hospital and from Bharuch Civil Hospital to Vadoara Hospital, where he had expired on the next day. Witness has informed the Court that the appellant was cultivating the land of the deceased and was in possession of the same and that the deceased was demanding the land for the purpose of construction of a residential house for him but the appellant had refused to hand over the possession of the land to her cousin. The witness has specifically stated that, therefore, her deceased cousin had gone to the house of Police Patel

Fatehsing. According to her, after the incident, the deceased had fallen down on the ground and that he was bleeding profusely. The witness has stated that at that time, the deceased had asked her to remove him to the Hospital immediately and that no other talk had taken place between her and her injured brother. During the course of recording the evidence, the witness had identified the appellant as the person who had inflicted the knife blows on the deceased. In her cross-examination, witness stated that at the time of incident, there was darkness. The witness has further asserted in her cross-examination that she had stated in her police statement that she had gone to the wada of the witness Fatehsinh for the purpose of calling the deceased as the dinner was ready. The witness also claimed that she had stated in her evidence that she had shouted for her sister Lalitaben and that Lalitaben had immediately come to the wada. She has further claimed that she had stated that in her police statement that witness Fatehsinh had apprehended the appellant on the spot and that the appellant was tied with a staircase. According to her she had stated in her police statement that the deceased had asked her to remove him immediately to the Hospital. During her cross-examination the witness has informed the Court that at the time of incident, except her no one else had raised shouts. The witness has admitted that between her house and house of Fatehsinh, there was a cactus hedge and there was no existence of way to the house of witness Fatehsinh through the said cactus hedge. The witness has informed the Court that for the purpose of going to the wada of Fatehsinh, one was required to go by the side of the hedge. The witness has also stated in her cross-examination that during the night hours, it was not possible to see a person standing in the wada of witness Fatehsinh from her house. The witness has denied the suggestion of the defence that she was falsely depositing before the Court that the appellant had given knife blows to the deceased. The witness has also stated that after the death of her father, the appellant was not permitting them to cultivate the land which had come to their share. A bare reading of the evidence of witness Vanitaben makes it more than clear that she had witnessed the incident in question. Her claim that the appellant had given knife blows on the back of the deceased stands amply corroborated by the evidence of Dr. Rakeshbhai Narendranath, who had performed autopsy on the dead body and noticed the external injuries sustained by the deceased. It is true that certain improvements are made by the witness during her examination before the court namely that the appellant was apprehended from the spot

itself etc. However, we are of the opinion that those improvements are insignificant and do not affect the main story of the prosecution. The claim made by this witness that she had loudly called out name of her sister and that Lalitaben had immediately come to the wada of witness Fatehsinh stands fully corroborated by the evidence of witness Lalitaben. The evidence of witness Vanitaben, read as a whole, inspires confidence.

10. In the case of Boya Ganganna and Another v/s.

The State of Andra Pradesh, 1976 S.C.C. (Cri) 102, while explaining as to how the evidence of ignorant and rustic women should be appreciated, the Supreme Court has observed that minor contradictions are bound to appear when ignorant and illiterate women are giving evidence. According to the Supreme Court even in case of trained and educated persons, memory sometimes plays false and this would be much more so in case of ignorant and rustic women and that evidence given by a witness would very much depend upon his power of observation and it is possible that some aspects of an incident may be observed by one witness while they may not be witnessed by another though both are present at the scene of offence. In the said case, some minor contradictions were pointed out by the learned counsel appearing on behalf of the appellant Nos.2 and 3 in the evidence of rustic women but the Supreme Court refused to disbelieve their evidence on the basis of minor contradictions. In the case of Narayan Chetanram Chaudhary v/s. State of Maharashtra, reported in (2000) 8 S.C.C. 457 the Supreme Court has held that only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. According to the Supreme Court, the omissions in the police statement by itself would not necessarily render the testimony of witness unreliable and when the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. The Supreme Court has further held that minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. It is also held that the omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of witness. Further the law is laid down by the Supreme court in the said decision is that even if there is contradiction in statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness.

11. Applying the principles laid down by the Supreme Court in the above referred to decisions to the facts of the present case, we find that the testimony of witness Vanitaben cannot be discarded because of some omissions, which have been brought on record of the case with regard to her previous police statement. With regard to falsehood stated or embellishments added by the prosecution witnesses, the Supreme Court in State of U.P. v/s. Anil Singh, AIR 1988 S.C. 1998 has held that it is well to remember that there is a tendency amongst witnesses in our country to back up a good case by false or exaggerated version and invariably the witnesses add embroidery to prosecution story perhaps for the fear of being disbelieved, but that is no ground to throw the case overboard if true in the main. The evidence of witness Vanitaben having been corroborated by the medical evidence and by the evidence of other three witnesses, we are of the opinion that the learned Judge did not commit any error in placing of reliance on deposition of witness Vanitaben for the purpose of convicting the appellant.

12. Coming to the evidence of witness Fatehsinh, we find that he is residing with his family members in Mandir Falia of village Vanthewad. The witness has stated before the Court that the deceased was staying at the house of his uncle and that there were two wadas between his house and the house where the deceased was staying. The witness has stated that between two wadas there is a cactus hedge and that near the second wada, the house of the deceased is situated. The witness has stated before the Court that the appellant is known to him and that the appellant was cultivating the land belonging to the deceased. The witness has clearly stated that the deceased had demanded the land from the appellant for the purpose of construction of a residential house and that earlier an alteration had taken place between the appellant and deceased. The witness has categorically stated in his evidence that the incident had taken place at about 8.00 P.M. and at that time he was taking dinner with his family members. According to this witness, the deceased had come seeking assistance to his problem and as he was taking dinner, he has asked him to wait, in the wada, which is situated on the back of his house. The witness has categorically stated that thereafter, the appellant had also come and that he had gone towards the wada, which is situated in the back of his house. What is claimed by the witness in his evidence is that thereafter, immediately he had heard shout that "I am killed" and on hearing shout, he had come out from his house and gone to his wada and found

that the deceased lying on the ground, whereas the appellant was not in the wada. The witness has further stated that in his cart the deceased was removed to the Jaghadia Government Hospital and that he had pointed out the place of incident when panchnama of place of occurrence was made, during the course of investigation. The witness has further stated in his evidence that after the incident the police had recorded his statement and that the deceased was desirous of constructing the residential house in the wada belonging to him. During the cross-examination, the witness has stated that the main door of his house is situated on east, whereas the wada is situated on the west of his house and that there was opening made in the hedge on western side. The witness has further stated in his cross-examination that at the time of incident there was a darkness in the Wada and when he had come out of his house on shouting being raised by the deceased, at that time witness Vanitaben was also there. The sworn testimony of this witness makes it clear that there are no major contradictions in his evidence at all. He is not sought to be contradicted with his earlier police statement. His evidence clinchingly establishes that the appellant had gone in the wada of his house where the deceased was already sitting and that immediately he had heard the shout raised by the deceased. His evidence would indicate that the appellant was last seen in the company of the deceased and that the appellant was not in the wada when this witness had come out of his house on hearing the shout of the deceased. The evidence of (1) Lalitaben (2) Vanitaben and (3) Fatehsinh clearly establishes that the appellant was not handing over wada land to the deceased though the land was needed by the deceased and that the appellant had sufficient motive to commit the murder of the deceased. The fact that the deceased was last seen alive in the company of the appellant and that immediately after the incident, the appellant was not found in wada by witness Fatehsinh coupled with the motive proved also establishes that the appellant had committed the murder of the deceased.

12. Further the evidence of witness Geetaben Fatehsinh Vasava, P.W.8, Exh.23 makes it clear that she is the daughter of Fatehsinh and residing with her parents at village Vanthewad. At the time of incident she was studying in 10th Standard and was known the appellant as well as deceased. The witness has stated before the Court that the incident had taken place in the wada, which is situated on the back of her house and that at that time the family members were taking dinner. The witness has specifically stated that first of all the

deceased had come and as they were taking dinner, the deceased had gone in the wada and was sitting there and, thereafter, the appellant had come and he had also gone towards the wada. According to this witness, after the appellant had gone to wada; immediately the deceased had raised shout for help. What is claimed by this witness in her evidence is that on hearing the shout raised by the deceased, she had also come out with other family members and found that the deceased had sustained knife blows and was bleeding profusely, whereas, the appellant was not in the wada. In her cross-examination, the witness has stated that when she had come out of the house, at that time Vanitaben and Lalitaben were also there. We may state that the evidence of this witness has almost gone unchallenged. Where the evidence of the witness is allowed to go unchallenged with regard to a particular point, it may safely be accepted as true. The evidence of this witness is corroborated by the evidence of her father which establishes that the appellant was last seen in the company of the deceased at the wada and that on hearing the shout he had gone there and found that the deceased was in an injured condition, but the appellant was not in the wada. Thus, this evidence also establishes that in all human probability the act of murder of the deceased was committed by the appellant and the appellant above. We may state that the prosecution has successfully proved the motive which must have prompted, the appellant to commit the crime in question. The evidence of witnesses Fatehsinh and Geetaben has to be viewed in the light of the said strong motive on the part of the appellant. Further we find that the appellant had produced blood stained knife at the time of his arrest for the offence punishable under Section 324 of the Indian Penal Code. It is true that the panch witnesses have turned hostile. However, the law on the point is well settled that merely because the panch witnesses have turned hostile, the evidence of the Police Officer does not become doubtful if otherwise it is found to be true. Ultimately, the Court on appreciation of evidence has to find out as to whether the evidence of a Police Officer is trustworthy and inspires confidence of the Court or not. The evidence of witness Ishwarbhai Maganbhai is recorded in the present case at Exh.25. He has clearly stated in his examination-in-chief that on April 9, 1993, the appellant was arrested and he had produced the blood stained knife, which was seized under a panchnama. This part of evidence is not challenged by the appellant during the course of cross-examination of this witness at all. There is no reason for the Court to disbelieve the say of the police Head Constable Ishwarbhai Maganbhai, that at the time of arresting of

the appellant, the appellant himself had produced blood stained knife. In view of this state of affairs, we are of the opinion that the learned Judge was justified in holding that the production of blood stained earth and blood stained knife by the appellant is proved by the prosecution. We may state that at the time of preparing panchnama of the place of occurrence, the blood stained earth was collected by the Investigating Officer i.e. by the Police Head Constable Ishwarbhai Maganbhai and incriminating articles were sent to F.S.L. for analysis. The report of the Serologist, which is on the record of the case at Exh.10, establishes that the blood group of the deceased was "B" and that the blood stains found on the knife produced by the appellant was also having the same blood group. Thus, this circumstance is also against the appellant and is rightly relied upon by the learned Judge of the Trial Court.

13. We may state that the incriminating circumstances appearing against the appellant were explained by the learned Judge to him. The appellant had not offered any explanation in his further statement recorded under Section 313 of the Criminal Procedure Code. We further find that the appellant had submitted written explanation for consideration of the Court. In the written explanation, it was stated by the appellant that he had not gone to the house of witness Fatehsinh on the date of the incident. As observed earlier, the evidence of witnesses Vanitaben, Fatehsinh and Geetaben establishes beyond reasonable doubt that the appellant had gone to the house of Fatehsinh on the date of the incident. Thus there is no manner of doubt that the appellant had offered false explanation before the Court in the written explanation. Further, the appellant had claimed in the written explanation that on finding that the deceased was lying in bleeding condition, witness Fatehsinh had called Lalitaben and Vanitaben and that after entering into conspiracy he was falsely involved in the case. We may state that the witness Fatehsinh had no reason to conspire against the appellant at all and the deceased had merely attempted to approach him for redressal of his grievance. It is not a case of the appellant that witness Fatehsinh had asked him to do any favour to the deceased. Further the record does not indicate that there was any enmity between the deceased and witness Fatehsinh which would prompt him to commit the murder of the deceased. There was no reason for the two sisters to conspire with witness Fatehsinh in order to implicate the appellant falsely in such a serious case and allow the real culprit to go scot free. In fact even it is not suggested to any of the witnesses that witness Fatehsinh

was on inimical terms with the appellant and had motive to implicate the appellant falsely. The claim of the appellant that he had no dispute regarding the wada with the deceased is also found to be false because all the witnesses have categorically stated that the appellant was cultivating the land belonging to the deceased and though deceased had demanded back the land for construction of his residential house, the appellant had refused to give the land and, therefore, quarrel had taken place between the appellant and deceased. On analysis of written explanation we are satisfied that a totally false explanation is offered by the appellant to misguide the Court and this also will have to be treated as an additional link in the chain of circumstances appearing against the appellant.

14. The submissions that there was darkness and, therefore, the witnesses examined by the prosecution could not have identified the appellant as the person who had caused injury to the deceased and, therefore, benefit of doubt should be given to the appellant has no substance. We may state that at the time of incident witness Fatehsinh was taking dinner with his family members and, therefore it is reasonable to hold that there was light in the room in which they were taking dinner. The evidence of witness Fatehsinh establishes beyond reasonable doubt that the distance between the room, in which he and his family members were taking dinner and wada, where the incident had taken place, is hardly 5 to 6 feet. The evidence of witness Geetaben, which is not challenged at all, establishes that the appellant had entered from the main door and had gone towards the wada from the verandah meaning thereby the door abutting in the wada was open. Under the circumstances, it is reasonable to hold that some light was available in the wada. Further villagers living in the villages get accustomed to seeing things in the darkness because their eyesight gets conditioned and becomes accustomed to the situation. Having regard to the totality of facts and circumstances of the case, we are of the opinion that no benefit of doubt can be given to the appellant on the ground that there was darkness in the wada and that witness Vanitaben could not have seen the appellant inflicting knife blows to the deceased.

15. The submission that no evidence is adduced by the prosecution to establish that the appellant had knowledge that the deceased was in the wada of Fatehsinh and as the appellant had no reason to go to wada of witness Fatehsinh benefit of doubt should be given to the appellant has also no substance, more particularly when

all the witnesses namely Vanitaben, Fatehsinh and Geetaben have clearly and categorically stated that the appellant was present in the wada.

16. The medical evidence on record establishes that the deceased had sustained serious injuries on the vital part of his body. According to the evidence of Dr. Rakeshkumar Narendranath Tandan, P.W.3 Exh.14 the external injury No.2 was sufficient in ordinary course of nature to cause the death of deceased. There is no manner of doubt that the appellant had inflicted blows with a dangerous weapon on the vital part of the body of the deceased. It is not the case of the appellant that the injury inflicted by him was unintentional. It is not the case of the appellant that he had intended blows on some other part of the body of the deceased, but because of movement of the deceased, blow landed on the waist of the deceased. Having regard to the totality of the facts and circumstances of the case, it will have to be held that it was the intention of the appellant to cause serious injury which ultimately proved to be fatal. Therefore, the offence committed by the appellant would be punishable under Section 302 of the Indian Penal Code and not under Section 304 either Part-I or Part-II of the Indian Penal Code, as is contended by the learned counsel for the appellant.

17. The net result of the above discussions is that the prosecution has proved beyond reasonable doubt that the appellant had committed the murder of the deceased on April 8, 1993 by inflicting the blow with knife in the wada of house of witness Fatehsinh. The conviction of the appellant recorded by the learned Judge of the trial court being just is not liable to be interfered with in the present Appeal and the Appeal will have to be dismissed.

18. For the foregoing reasons, the appeal fails and is dismissed. The muddamal to be disposed of in terms of directions given by the learned Judge in the impugned Judgment.

(J.M.Panchal, J.)

(Akshay H. Mehta, J.)

vrpanchal